IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	I.D. # 0407020818
v.	)	
ANDREW GUDZELAK	)	
Defendant	)	

Submitted: January 26, 2007
Decided: January 31, 2007

Upon Defendant's Motion for Postconviction Relief.
DENIED.

ORDER

Donald R. Roberts, Deputy Attorney General, Wilmington, Delaware, Attorney for the State.

Andrew Gudzelak, Wilmington, Delaware, *pro se*.

COOCH, J.

This 31st day of January 2007, upon consideration of Defendant's motion for postconviction relief, it appears to the Court that:

1. On September 14, 2005, Defendant pled guilty before the undersigned judge to Rape Fourth Degree. He was subsequently sentenced by a different judge on November 18, 2005 to five years at level V, suspended after two years for three years at decreasing levels of supervision. Defendant timely filed this motion on July 21, 2006 alleging four grounds for relief: (1) "conflict of interest," (2) "prosecutorial misconduct & vindictiveness," (3) "ineffective assistance of counsel," and (4) "actual innocence."

2. Because none of the procedural bars of Superior Court Criminal Rule 61 apply in this case, the Court will address the merits of the motion (insofar, at this stage, as they relate to the entry of the guilty plea). Defendant's first two grounds for relief arise out of essentially the same allegation. He claims that the victim's biological mother has the same "distinctive" last name of "Roberts" as the Deputy Attorney General in this case. As a result, Defendant concludes that the two are related, "constituting not only a manifest conflict of interest, but also a level of prosecutorial misconduct." However, there is no evidence whatsoever to support the suggestion that Deputy Attorney General Donald R. Roberts is related to the victim's mother. Rather, Mr. Roberts has attested in an affidavit that he "has absolutely no relationship of any sort or kind to the victim or her mother."[1]

[1] Donald R. Roberts Aff. at ¶ 3.

Therefore, Defendant's first two grounds are meritless and do not entitle him to relief.

3. Defendant's next ground for relief alleges ineffective assistance of counsel. To succeed on an ineffective assistance of counsel claim, Defendant must show both (a) "that counsel's representation fell below an objective standard of reasonableness" and (b) "that there is a real probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different."[2] Furthermore, when evaluating counsel's performance, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of professional assistance."[3]

4. Defendant contends that his counsel was ineffective when he "allowed [Defendant] to enter into a plea agreement when he was known to have been under the influence of prescription narcotics."[4] Defendant further alleges that counsel "coerced him into a plea bargain." However, these allegations are unsupported. Counsel's affidavit states that "[a]t no time did [Defendant] ever indicate any hesitancy to take the plea, especially once the DNA analysis was provided by [the State]."[5] In fact, Defendant was willing

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[2] *Stickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

[3] *Id*. at 689.

[4] Defendant also provided the Court with a list of prescription medicine that Defendant filled at Wal-Mart Pharmacy beginning on June 27, 2005.

[5] Louis B. Ferrara Supp. Aff. at ¶ 16.

to enter a plea agreement even before the DNA evidence was provided, but counsel advised against it at that point. Counsel states in his affidavit that:

> I always advised [Defendant] that he should try the case until the DNA analysis came back implicating him . . . [Defendant] wished to plead guilty to 'get it over with' and I approached [the Court] at sidebar and indicated that I would not do that in light of his statement that he had not committed the offense. It was only after we reviewed the DNA results that a decision was made to accept the plea to Rape in the Fourth Degree rather than run the risk of a mandatory sentence on Rape in the Second Degree.[6]

5. The plea colloquy also clearly contradicts Defendant's assertions. After counsel explained to the Court that Defendant was taking some medication for his back, the Court asked: "Have any or all those medications combined caused you to have any difficulty in understanding the proceedings today?" Defendant responded, "No, no."[7] Defendant also indicated that he "freely and voluntarily decided to plead guilty."[8] Moreover, on the truth-in-sentencing guilty plea form, Defendant affirmed that he was satisfied with counsel's representation. In the absence of evidence to the contrary, Defendant is bound by his representations to the

[6] *Id*.

[7] Tr. of Plea Colloquy Proceedings at 6.

[8] *Id*. at 7. *See also* Louis B. Ferrara Supp. Aff. at ¶ 9 ("I never felt in my dealings with [Defendant] that the medication was impairing his mental ability to understand what was going on.").

Court.[9] The record indicates that Defendant's decision to take the plea was voluntary and due to the "overwhelming nature" of the DNA evidence.[10] Therefore, Defendant is not entitled to relief on this ground.

6. In addition, Defendant contends that his counsel had evidence that "would have exonerated" Defendant "thrown out at the preliminary hearing." Defendant also accuses counsel of failing to utilize what he calls "love" cards given to him by the victim. According to Defendant, these cards evidenced a "loving relationship" between Defendant and the victim and would have "nullified the accusations" against Defendant. However, there was no evidence "thrown out" at the preliminary hearing, or at any other hearing in this case.[11] Moreover, Defendant did provide the State "with color copies of all cards and letters provided by the victim to Defendant."[12] Accordingly, the Court finds no merit in these assertions. Because Defendant has failed to raise any legitimate claim of ineffective assistance of counsel, he is not entitled to relief on this ground.

7. Defendant's final ground for relief to be decided at this stage is that he is innocent. However, during the plea colloquy, Defendant represented to

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[9] *See State v. McCurley*, 2004 WL 2827857, at *5 (Del. Super.) ("It is well established that a 'defendant's statements to the Court during the guilty plea colloquy are presumed to be truthful.'"(internal citation omitted)).

[10] Louis B. Ferrara Aff. at ¶ 8.

[11] State Resp. to Def. Mot. at ¶ 12; Louis B. Ferrara Aff. at ¶ 12; Louis B. Ferrara Supp. Aff. at ¶ 1.

[12] Louis B. Ferrara Aff. at ¶ 12. *See also* State Resp. to Def. Mot. at ¶ 15.

the Court that he did commit the offense of Rape Fourth Degree and that he was knowingly, voluntarily, and intelligently entering a plea to that offense.[13] Additionally, he signed the plea agreement and the truth-in-sentencing guilty plea form. Furthermore, when the Court asked him "Do you understand that what's being done today is final, you will not be able to come back at any later time to withdraw the guilty plea?" Defendant responded "Yes."[14] Defendant has offered no viable support to his assertion that he is innocent.[15] Consequently, Defendant is not entitled to relief on this ground.

8. For all the reasons stated above, Defendant's motion for postconviction relief is **DENIED**.[16]

IT IS SO ORDERED.

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Richard R. Cooch, J.

oc: Prothonotary
cc: Investigative Services
Louis B. Ferrara, Esquire

[13] Tr. of Plea Colloquy Proceedings at 8-9.

[14] *Id*. at 9.

[15] *See McCurley*, 2004 WL 2827857, at *5 (rejecting the defendant's claim of innocence in her motion for postconviction relief because she failed to present clear and convincing evidence to rebut her statements on the truth-in-sentencing guilty plea form and her sworn testimony during the plea colloquy before the court).

[16] Defendant also claims that the sentencing judge should have recused herself because he asserts she had previously represented Defendant in a 1997 case. Defendant's motion will now be referred to the sentencing judge for any appropriate action on this claim relating to his sentencing.